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In re Application of  
Takahashi et al.  
Application No.: 10/512,076  
PCT No.: PCT/JP03/05729  
Int. Filing Date: 07 May 2003  
Priority Date: 07 May 2002  
Attorney Docket No.: 040577  
For: Medical Cockpit System

PETITION

This is in response to the "Submission of Fees Under 37 CFR 1.28(c)" filed on 04 February 2005.

### **BACKGROUND**

This international application was filed on 07 May 2003, claimed an earlier priority date of 07 May 2002, and designated the U.S. The International Bureau transmitted a copy of the published international application to the USPTO on 20 November 2003. The 30 month time period for paying the basic national fee in the United States expired at midnight on 07 November 2004. Applicants filed *inter alia* the small entity basic national fee on 05 November 2004.

### **DISCUSSION**

Applicants indicate that "certain fees paid to the U.S. Patent and Trademark Office, through no deceptive intent or intent to deceive, were in good faith but incorrectly paid at the small entity rate, even though the subject application was not entitled to small entity fees." 37 CFR 1.28(c) provides that

(c) How errors in small entity status are excused . If status as a small entity is established in good faith, and fees as a small entity are paid in good faith, in any application or patent, and it is later discovered that such status as a small entity was established in error, or that through error the Office was not notified of a loss of entitlement to small entity status as required by § 1.27(g)(2), the error will be excused upon: compliance with the separate submission and itemization requirements of paragraphs (c)(1) and (c)(2) of this section, and the deficiency payment requirement of paragraph (c)(2) of this section:

(1) Separate submission required for each application or patent . Any paper submitted under this paragraph must be limited to the deficiency payment (all fees paid in error), required by paragraph (c)(2) of this section, for one application or one patent. Where more than one application or patent is involved, separate submissions of deficiency payments (e.g., checks) and itemizations are required for each application or patent. See § 1.4(b).

(2) Payment of deficiency owed . The deficiency owed, resulting from the previous erroneous payment of small entity fees, must be paid.

(i) Calculation of the deficiency owed . The deficiency owed for each previous fee erroneously paid as a small entity is the difference between the current fee amount (for other than a small entity) on the date the deficiency is paid in full and the amount of the previous erroneous (small entity) fee payment. The total deficiency payment owed is the sum of the individual deficiency owed amounts for each fee amount previously erroneously paid as a small entity. Where a fee paid in error as a small entity was subject to a fee decrease between the time the fee was paid in error and the time the deficiency is paid in full, the deficiency owed is equal to the amount (previously) paid in error;

(ii) Itemization of the deficiency payment . An itemization of the total deficiency payment is required. The itemization must include the following information:

(A) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non-small entity;

(B) The small entity fee actually paid, and when. This will permit the Office to differentiate, for example, between two one-month extension of time fees erroneously paid as a small entity but on different dates;

(C) The deficiency owed amount (for each fee erroneously paid); and

(D) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section.

(3) Failure to comply with requirements . If the requirements of paragraphs (c)(1) and (c)(2) of this section are not complied with, such failure will either: be treated as an authorization for the Office to process the deficiency payment and charge the processing fee set forth in § 1.17(i), or result in a requirement for compliance within a one-month non-extendable time period under § 1.136(a) to avoid the return of the fee deficiency paper, at the option of the Office.

Applicant paid the small entity basic national fee in the amount of \$475.00. The current large entity basic national fee is \$300.00. As the "fee paid in error as a small entity was subject to a fee decrease between the time the fee was paid in error and the time the deficiency is paid in full, the deficiency owed is equal to the amount (previously) paid in error;" therefore, the deficiency amount owed for the basic national fee is \$475.00. Applicants paid the small entity multiple dependent claim fee in the amount of \$150.00. The current large entity multiple dependent claim fee is \$360.00, so the deficiency amount owed for the multiple dependent claims fee is \$210.00. Applicants paid the small entity excess claims fee in the amount of \$54.00. The current large entity excess claims fee is \$50.00, for a total of \$200.00 (since there are 24 claims, 4 more than 20), so the deficiency amount owed for excess claims over 20 is \$146.00. Therefore, the total shortfall due is \$831.00. Applicants remitted \$679.00 with the instant "Submission of Fees Under 37 CFR 1.28(c)." Therefore, the \$152.00 shortfall is being charged to counsel's Deposit Account No. 01-2340, as authorized by the instant "Submission..."

**DECISION**

The submission under 37 CFR 1.28(c) is **ACCEPTED** as described above.

This application is being forwarded to the National Stage Processing Branch for further processing. Its date under 35 U.S.C. 371(c)(1), (2) and (4) is **05 November 2004**.



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